

THOMSON

清华管理学系列英文版教材

商法

企业的法律、道德与国际环境

第 5 版

(美) Herbert M. Bohlman 著
Mary Jane Dundas

The Legal
Ethical and International
Environment of Business
Fifth Edition



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Herbert M. Bohlman, Mary Jane Dundas
The Legal, Ethical and International Environment of Business, 5e
EISBN: 0-324-06183-8

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981-254-694-4

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图书在版编目(CIP)数据

商法：企业的法律、道德与国际环境 = The Legal, Ethical and International Environment of Business: 第5版：英文 / (美) 博尔曼(Bohlman, H. M.), (美) 邓达斯(Dundas, M. J.) 著. —影印本. —北京：清华大学出版社，2004.8
(清华管理学系列英文版教材)

ISBN 7-302-08869-1

I. 商… II. ①博… ②邓… III. 商法—美国—高等学校—教材—英文 IV. D971.239.9

中国版本图书馆 CIP 数据核字 (2004) 第 058481 号

出版者：清华大学出版社

<http://www.tup.com.cn>

社总机：(010) 6277 0175

地址：北京清华大学学研大厦

邮编：100084

客户服务：(010) 6277 6969

责任编辑：王青

印刷者：北京四季青印刷厂

装订者：三河市召亮装订有限公司

发行者：新华书店总店北京发行所

开本：203×260 印张：61.5

版次：2004年8月第1版 2004年8月第1次印刷

书号：ISBN 7-302-08869-1/F·830

印数：1~3000

定价：84.00元

本书如存在文字不清、漏印以及缺页、倒页、脱页等印装质量问题，请与清华大学出版社出版部联系调换。联系电话：(010) 62770175-3103 或 (010) 62795704

Strategy for Ethical Decision Making

When confronted with a problem, a person can take any number of actions. Some actions may be useful, whereas others may create more problems. Philosophers have developed various ethical decision-making models to help a person to resolve a dilemma. Some models are more complex than others.

The following is a decision-making model you can use to resolve the ethical problems found at the beginning of each chapter. This model consists of the following six steps:

1. **Facts.** Gather all the necessary facts, including whether any state or federal statutes or whether any administrative regulations apply. Once you have examined the facts, you will be able to define the problem.
2. **Stakeholders.** List all the stakeholders that may be affected by the decision.
3. **Values.** List all the personal and work-related values involved in the particular case.

These values may include one or more of the following:
 - a. Personal values
 - Religious values or idea of good
 - Honesty, such as truth telling, candidness, or openness
 - Integrity, such as acting on convictions, courageous acts, advocacy, or leadership by example
 - b. Institutional values
 - Responsible citizenship, such as respect for law or social consciousness
 - Pursuit of excellence, such as quality of work
 - Accountability, such as responsibility or independence
 - c. Interpersonal values
 - Promise keeping, such as fulfilling the spirit of commitments
 - Loyalty, such as fidelity or confidentiality
 - Fairness, such as justice, equal treatment, diversity, or independence
 - Caring for others, such as compassion or kindness
 - Respect for others, such as human dignity or uniqueness
4. **Alternative Actions.** List all the possible alternative actions from which you could choose.
5. **Prioritization.** Choose and prioritize by answering the following questions:
 - a. Which stakeholder do you believe is the most important in this situation?
 - b. Which value do you believe is the most important in this situation?
 - c. Which of the choices do you believe will cause the greatest good or the least harm?
6. **Potential Action.** Make a decision as to which stakeholder should prevail and determine a strategy (course of action) to carry out your decision.

出 版 说 明

为了适应经济全球化的发展趋势,满足国内广大读者了解、学习和借鉴国外先进的管理经验和掌握经济理论的前沿动态,清华大学出版社与国外著名出版公司合作影印出版一系列英文版经济管理方面的图书。我们所选择的图书,基本上是已再版多次、在国外深受欢迎、并被广泛采用的优秀教材,绝大部分是该领域中较具权威性的经典之作。在选书的过程中,我们得到了很多专家、学者的支持、帮助和鼓励,在此表示谢意!清华管理学系列英文版教材由清华大学经济管理学院和北京大学经济学院马力、毛波、王雪莉、刘丽文、郎立君、钱小军、姜彦福、蔚林巍、刘新立、吴志明等老师审阅,在此一并致谢!

由于原作者所处国家的政治、经济和文化背景等与我国不同,对书中所持观点,敬请广大读者在阅读过程中注意加以分析和鉴别。

我们期望这套影印书的出版对我国经济科学的发展能有所帮助,对我国经济管理专业的教学能有所促进。

欢迎广大读者给我们提出宝贵的意见和建议;同时也欢迎有关的专业人士向我们推荐您所接触到的国外优秀图书。

清华大学出版社经管事业部

2004. 6

世纪之交,中国与世界的发展呈现最显著的两大趋势——以网络为代表的信息技术的突飞猛进,以及经济全球化的激烈挑战。无论是无远弗界的因特网,还是日益密切的政治、经济、文化等方面的国际合作,都标示着21世纪的中国是一个更加开放的中国,也面临着一个更加开放的世界。

教育,特别是管理教育总是扮演着学习与合作的先行者的角色。改革开放以来,尤其是20世纪90年代之后,为了探寻中国国情与国际上一切优秀的管理教育思想、方法和手段的完美结合,为了更好地培养高层次的“面向国际市场竞争、具备国际经营头脑”的管理者,我国的教育机构与美国、欧洲、澳洲以及亚洲一些国家和地区的大量的著名管理学院和顶尖跨国企业建立了长期密切的合作关系。以清华大学经济管理学院为例,2000年,学院顾问委员会成立,并于10月举行了第一次会议,2001年4月又举行了第二次会议。这个顾问委员会包括了世界上最大的一些跨国公司和中国几家顶尖企业的最高领导人,其阵容之大、层次之高,超过了世界上任何一所商学院。在这样高层次、多样化、重实效的管理教育国际合作中,教师和学生与国外的交流机会大幅度增加,越来越深刻地融入到全球性的教育、文化和思想观念的时代变革中,我们的管理教育工作者和经济管理学习者,更加真切地体验到这个世界正发生着深刻的变化,也更主动地探寻和把握着世界经济发展和跨国企业运作的脉搏。

我国管理教育的发展,闭关锁国、闭门造车是绝对不行的,必须同国际接轨,按照国际一流的水准来要求自己。正如朱镕基总理在清华大学经济管理学院成立十周年时所发的贺信中指出的那样:“建设有中国特色的社会主义,需要一大批掌握市场经济的一般规律,熟悉其运行规则,而又了解中国企业实情的经济管理人才。清华大学经济管理学院就要敢于借鉴、引进世界上一切优秀的经济管理学院的教学内容、方法和手段,结合中国的国情,办成世界第一流的经营学院。”作为达到世界一流的一个重要基础,朱镕基总理多次建议清华的MBA教育要加强英语教学。我体会,这不仅因为英语是当今世界交往中重要的语言工具,是连接中国与世界的重要桥梁和媒介,而且更是中国经济管理人才参与国际竞争,加强国际合作,实现中国企业的国际战略的基石。推动和实行英文教学并不是目的,真正的目的在于培养学生——这些未来的企业家——能够具备同国际竞争对手、合作伙伴沟通和对抗的能力。按照这一要求,清华大学经济管理学院正在不断推动英语教学的步伐,使得英语不仅是一门需要学习的核心

课程，而且渗透到各门专业课程的学习当中。

课堂讲授之外，课前课后的大量英文原版著作、案例的阅读对于提高学生的英文水平也是非常关键的。这不仅是积累相当的专业词汇的重要手段，而且是对学习者思维方式的有效训练。

我们知道，就阅读而言，学习和借鉴国外先进的管理经验和掌握经济理论动态，或是阅读翻译作品，或是阅读原著。前者属于间接阅读，后者属于直接阅读。直接阅读取决于读者的外文阅读能力，有较高外语水平的读者当然喜欢直接阅读原著，这样不仅可以避免因译者的疏忽或水平所限而造成的纰漏，同时也可以尽享原作者思想的真实表达。而对于那些有一定外语基础，但又不能完全独立阅读国外原著的读者来说，外文的阅读能力是需要加强培养和训练的，尤其是专业外语的阅读能力更是如此。如果一个人永远不接触专业外版图书，他在获得国外学术信息方面就永远会比别人差半年甚至一年的时间，他就会在无形中减弱自己的竞争能力。因此，我们认为，有一定外语基础的读者，都应该尝试一下阅读外文原版，只要努力并坚持，就一定能过了这道关，到那时就能体验到直接阅读的妙处了。

在掌握大量术语的同时，我们更看重读者在阅读英文原版著作时对于西方管理者或研究者的思维方式的学习和体会。我认为，原汁原味的世界级大师富有特色的表达方式背后，反映了思维习惯，反映了思想精髓，反映了文化特征，也反映了战略偏好。知己知彼，对于跨文化的管理思想、方法的学习，一定要熟悉这些思想、方法所孕育、成长的文化土壤，这样，有朝一日才能真正“具备国际战略头脑”。

以往，普通读者购买和阅读英文原版还有一个书价的障碍。一本外版书少则几十美元，多则上百美元，一般读者只能望书兴叹。随着全球经济合作步伐的加快，目前在出版行业有了一种新的合作出版的方式，即外文影印版，其价格几乎与国内同类图书持平。这样一来，读者可以不必再为书价发愁。清华大学出版社这些年在这方面一直以独特的优势领先于同行。早在1997年，清华大学出版社敢为人先，在国内最早推出一批优秀商学英文版教材，规模宏大，在企业界和管理教育界引起不小的轰动，更使国内莘莘学子受益良多。

为了配合清华大学经济管理学院推动英文授课的急需，也为了向全国更多的MBA试点院校和更多的经济管理学院的教师和学生提供学习上的支持，清华大学出版社再次隆重推出与世界著名出版集团合作的英文原版影印商学教科书，也使广大工商界人士、经济管理类学生享用到最新最好质优价廉的国际教材。

祝愿我国的管理教育事业在社会各界的大力支持和关心下不断发展、日进日新；祝愿我国的经济建设在不断涌现的大批高层次的面向国际市场竞争、具备国际经营头脑的管理者的勉力经营下早日中兴。

赵纯均 教授

清华大学经济管理学院院长
全国工商管理硕士教育指导委员会副主任

Dedication

M. J. D. dedicates this book to the memory of her parents, R. J and Marie A. Dundas, and her sisters, Jean and Marilyn, and their families.

H. M. B. dedicates this book to his wife, Mimi, and his children, Bill, Patti, Mike, and Laura, and their families.

Preface

During the last three decades, the legal scene in the United States has changed tremendously. The future of the law will be even more dynamic. As a result, businesses must influence and adapt to the dramatically changing legal environment. *The Legal, Ethical, and International Environment of Business*, Fifth Edition, was written with two goals in mind—to present to the student the breadth of the legal environment of business and to provide a legal, ethical, regulatory, international, and technological foundation that can be used in his or her business or government career. Where appropriate, comments are made about the political and social aspects of the legal environment.

To accomplish these goals, we have presented materials that cover both private and public legal aspects of business. Unit I provides students with an introduction to law, ethics, and the World Wide Web (WWW). This unit includes chapters on ethics, the judicial system, and alternatives to the judicial system called dispute resolution procedures. The chapters on constitutional law, administrative agencies, and criminal law introduce students to the regulatory issues. Unit II covers business and private law. Topics include torts; contracts; sales law; negotiable instruments; international business law; rights of consumers, debtors, and creditors; consumer protection; and property and computer law. Unit III examines the formation of business entities and agency and employment law. Unit IV sets out the various aspects of government regulation, which includes securities, antitrust, and labor and employment law; equal opportunity; and environmental law.

The fifth edition includes technological, ethical, and international sections in every chapter. Students are provided an opportunity to study the historical

development of the U.S. legal system along with a general discussion of how constitutional issues affect businesses. The text integrates the American Assembly of Collegiate Schools of Business (AACSB) curriculum standards to cover ethical, global, political, social, legal, regulatory, environmental, and technological issues.

New to the Fifth Edition

Technological issues are in the forefront of business issues today. New to the fifth edition is the *CyberLaw* feature. Each chapter includes a legal discussion on how cyberspace has impacted, changed, or added new legal issues to a particular legal topic. *CyberLaw* acquaints students with current legal issues concerning technology. For example, businesses are adopting technology to drive down costs of purchasing. One method used is electronic business-to-business auctions. These auctions are compared with business-to-consumer auctions. Businesses use the web to sell items through electronic catalogs. Web businesses currently are exempt from sales taxes. Because sales taxes are not imposed on these transactions, how have state tax revenues been impacted? How are the state governments responding? These issues are explored to illustrate the ripple effect of decisions involving technology.

The *Using the World Wide Web* feature has been expanded. This edition has built a large web database with each chapter has its own summary of web addresses. The web addresses on the inside back cover have been updated and make it easy for students to find commonly used web addresses, such as

www.whitehouse.gov. Because faculty and students have access to the web, each chapter has two *Web Activities*. Additionally, the last problem in the *Questions and Case Problems* section includes an additional web activity.

New to this edition is a reference in each chapter to a fictitious business called Artiste Login Products, Inc. This fictitious business is used to emphasize the overall view of each chapter.

Each chapter has a court case decided in 2000. These latest cases keep the students interested in the current law. Business-oriented issues, such as the blowouts of the Firestone/Bridgestone tires used primarily on Ford vehicles, are the focus of the *Legal Highlight* features. The new Third Restatements of Torts position on product liability is likewise presented in the text of the chapter on product liability.

The chapter on criminal law includes a discussion of the recent U.S. Supreme Court decision to uphold the 1960s case of *Miranda v. Arizona*. In the chapter of secured transactions, the new Uniform Commercial Code, Article 9, is fully discussed. The new Article 9 modifies prior law as to where to file a financing statement and broadens the different types of collateral.

This fifth edition has integrated technology issues, landmark cases with 2000 cases, and business and government web sites. Each chapter has questions that are designed such that the students should use the web to find answers, just as they will be doing in their business lives.

Total Learning/ Teaching Package

This text constitutes what we believe to be a total learning/teaching package. It contains numerous pedagogical aids and high-interest additions.

Case Selection and Presentation

Each chapter has several cases to illustrate the application of the law to specific business problems. We have tried to create a balance between classic cases that are well recognized and recent cases that have changed the

law significantly. Each case starts with the citation that includes the court, the date, the federal or state reporter (if available), the West reporter, and, when possible, a web citation.

The *Background and Facts* section focuses on the setting in which the case arose and identifies the plaintiffs and defendants. Text from an actual court case is then presented in an abbreviated form. Although the case is in an abbreviated form, enough judicial material is included to allow the professor to facilitate a discussion with the students to explore the reasoning and impact of the case. Finally, the *Decision and Remedy* section clearly states who prevailed in the case and why. When appropriate, we include a *Comment* section that presents additional material not available from the case itself or that indicates future trends. Each case ends with a *Critical Thinking* problem that helps the students reach a deeper level of understanding of the law and public policy.

Chapter Features

Each chapter includes one or more of the following special sections. These segments are designed to be instructive as well as interesting.

Quotations

Each chapter opens with a brief quotation that is appropriate to the chapter material. The source of the quote is included.

Ethical Considerations

The emphasis on ethics in academic studies is reflected in the standards set by the AACSB. These standards require that ethics be integrated into the study of business, and this text likewise integrates ethics into each chapter. Chapter 2, *Ethics and Corporate Social Responsibility*, covers ethical theories and provides a basis for class discussion of the ethical problems set out at the beginning of each chapter. A model is provided in Chapter 2 and reprinted on the inside front cover to assist students in resolving ethical issues.

Fictitious Business

Contained in each chapter is a fictitious business called Artiste Login Products, Inc. This business is featured

in the *Introduction*. In some chapters, it is integrated, such as in Chapter 3 where Artiste Login Products, Inc., is involved in a lawsuit. In other chapters, the business is used in the *Web Activities* or the Internet problem at the end of the *Questions and Case Problems* section.

In the scenario, Artiste Login Products, Inc., has a web presence, sells both unique, handmade items, and a variety of other common goods, such as dinnerware. The instructor can build problems, current issues, and critical thinking around this business.

CyberLaw

The new feature entitled *CyberLaw* includes a discussion on a specific legal topic involving the web. New problems are discussed, such as the authentication of electronic signatures, along with new twists on old problems, such as privacy in the electronic age.

Exhibits

Most chapters have at least one exhibit to illustrate important aspects of the law. Some exhibits are charts, such as the one setting out the federal court system; others focus on classifications or summaries; and others illustrate forms used in the legal or business world, such as a sample credit sale contract.

Legal Highlights

All chapters have a feature entitled *Legal Highlight*. This feature is used to present stories and to provide practical advice, such as how to check on a Social Security account or examples of how the law was applied in an unusual situation.

International Considerations

The economic future of the United States is dependent on international trade. People involved with international business need a working knowledge of how international trade functions and the legal problems that may arise. The AACSB also is concerned with integrating global issues into the academic studies of business. Each chapter has an *International Consideration* that discusses international aspects of the chapter's subject matter. Chapter 13, *International Business Law*, covers various aspects of doing business in the global environment.

Legally Speaking

Toward the end of each chapter is material entitled *Legally Speaking*. In each such discussion we have attempted to present a factual situation that a businessperson could confront in his or her career. These situations concern problems that are collateral to the rest of the material contained within the chapter. They provide students with practical advice on how to apply the law.

Using the World Wide Web

Each chapter has a variety of references to web sites. This fifth edition integrates into the textual material references to web sites relating to cases, statutes, regulations, and organizations. Professors and students can use these references to find more information on the issues discussed in the chapter. *Using the World Wide Web* starts with a short discussion, followed by a summary of all the web sites in the chapter. This summary makes finding web sites easier. *Using the World Wide Web* ends with two *Web Activities*. At the end of each chapter is a research problem involving the use of the web.

Key Terms

Each chapter includes a list of *Key Terms*. The terms are first identified in the chapter by boldfaced type at which point a definition is provided. A key term used immediately prior to the definition is identified by the use of italics.

Questions and Case Problems

At the end of each chapter, there are ten *Questions and Case Problems*. The problems are a mix of hypothetical questions and actual case problems. The case problems are summaries of appellate court cases for which full citations are given. The last question involves a problem to be researched on the web.

Complete answers to all of the *Ethical Considerations* and the *Questions and Case Problems* are found in a separate manual entitled *Answers to Ethical Considerations, Critical Thinking, Web Activities, Questions and Case Problems*.

Appendices

This book can serve as a reference because of the appendices included. They are as follows:

- A The Constitution of the United States of America
- B The Uniform Commercial Code (Excerpts)
- C The Sherman Act (Excerpts)
- D The Clayton Act (Excerpts)
- E The Federal Trade Commission Act (Excerpts)
- F National Labor Relations Act (Excerpts)
- G The Federal Civil Rights Laws (Excerpts)
- H The Uniform Partnership Act (Excerpts)
- I International Top-Level Domains (ITLDs)
- J Critical Thinking
- K Selected World Wide Web Government Addresses
- L Spanish Equivalents for Important Legal Terms in English

Supplements

Study Guide

The *Study Guide* (0-324-06185-4) was written by Thomas Brierton of the University of the Pacific. Each chapter reinforces what the text has presented. The Study Guide consists of descriptions of general principles discussed in each chapter, chapter summaries in sentence outline form, and true-false, fill-in-the-blank, and multiple-choice questions to test students' comprehension.

Instructor's Manual

The *Instructor's Manual* (0-324-06184-6) was written by Dinah Payne of the University of New Orleans and Michael Hogg of Tulane University. Each chapter includes a chapter overview, chapter outline, case comments, discussion questions, ethical and international considerations comments, and instructional suggestions.

Test Bank

The *Test Bank* (0-324-06186-2) was written by Dinah Payne of the University of New Orleans and Michael Hogg of Tulane University. Each chapter of the *Test Bank* has approximately twenty-five true-false questions and seventy-five multiple-choice questions; many chapters have more items.

The *Test Bank* is available on *ExamView™*, a computerized testing software containing all of the questions in the printed test bank. This program is an easy-to-use test creation software package compatible with Microsoft Windows. Instructors can add or edit questions, instructions, and answers, and select questions by previewing them on the screen, selecting them randomly, or selecting them by number. Instructors can also create and administer quizzes online, whether over the Internet, a local-area network, or a wide-area network. Instructors should contact their West sales representative to inquire about acquiring *ExamView™*.

Answers to Ethical Considerations, Critical Thinking, Web Activities, Questions and Case Problems

The *Answer Manual* (0-324-06284-2) provides model answers to the *Ethical Considerations* that begin each chapter. This portion is followed by solutions to the *Questions and Case Problems* found in the end of each chapter.

Transparency Acetates

The supplements package contains a set of approximately thirty transparency acetates (0-324-06286-9).

PowerPoint Presentation Slides

Developed by Michael Hogg, more than 200 PowerPoint slides (0-324-06285-0) are available to supplement course content, adding structure and visual dimension to lectures.

Product Support Web Site

A rich web site at <http://bohlman.westbuslaw.com> complements the text providing many extras including learning and teaching resources, case updates, a product tour, and a guest book.

Acknowledgments

Many people are involved in the production of a textbook. The initial impetus for *The Legal, Ethical, and International Environment of Business*, Fifth Edition, came

from Rob Dewey, our editor, who has been a strong supporter of this project. A heartfelt thanks to Denise Simon, our developmental editor, who coordinated all the reviews, provided expert analysis, and made suggestions that make for a stronger textbook. A hearty thanks to Amy S. Gabriel, our production editor, who kept the project moving in a timely manner.

We acknowledge the important contribution of Professor Arthur Gross Schaefer from Loyola Marymount University in Los Angeles. His credentials as an attorney, certified public accountant, and rabbi, along with his work in the development of ethical audits for profit and nonprofit organizations, make him a unique individual with a very broad background. His work as an ethicist with practicing attorneys and judges, moreover, has provided him with a critical outlook on dealing effectively with real-life situations. He has used these perspectives to create the ethics decision model, the ethics cases within each chapter, and model answers found in the *Answers to Ethical Considerations, Critical Thinking, Web Activities, Questions and Case Problems*. This material is an integral part of our book and greatly improved the book's overall presentation.

A number of reviewers were kind enough to give us their ideas and comments on various drafts of the manuscript. They are listed below for the five editions.

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We thank our colleagues who encouraged us, supported us, and spent hours reviewing our rough drafts: Professors Luis Aranda, Eileen Aranda, Marianne Moody Jennings, Ethan Lock, Peter Reiss, and the late Claude Olney, all of Arizona State University; and Professor Marc Ruzicka, University of Tennessee, Knoxville. They were extremely helpful with our initial drafts and with giving us their creative ideas and thoughts. They also gave us the motivation to keep going on all five editions.

As careful as we have attempted to be, there are, no doubt, errors in this text for which we take full responsibility. We welcome comments from all users of the text, for it is by incorporating such comments that we can make this text even better in future editions.

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